

UNAPPROVED MINUTES  
CITY OF MILPITAS

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| Minutes:          | Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency) |
| Date of Meeting:  | May 18, 2004   |
| Time of Meeting:  | 6:00 p.m. (Closed Session)<br>7:00 p.m. (Regular Session)                                    |
| Place of Meeting: | Milpitas City Hall, 455 E. Calaveras Boulevard   |

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**ROLL CALL**

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez (arrived 6:05 p.m.) Livengood (arrived 6:05 p.m.), and Polanski.

**CLOSED SESSION**

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda (City Attorney Steve Mattas clarified that there was nothing to discuss for items 1, 2, and 7 and therefore, they should be removed from the agenda):

1. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR (REMOVED)**  
(Pursuant to Government Code Section 54956.8)  
Property: APN #022-08-042  
Negotiating Parties: City of Milpitas and County of Santa Clara  
Agency Negotiator: Thomas J. Wilson  
Under Negotiation: Terms and Conditions for Disposition or Lease
2. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR (REMOVED)**  
(Pursuant to Government Code Section 54956.8)  
Property: Vacant Property N. Main Street (APN No. 2208003)  
Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza  
Agency Negotiators: Thomas J. Wilson and Blair King  
Under Negotiation: Terms and conditions for acquisition of property
3. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**  
(Pursuant to Government Code Section 54956.8)  
Property: 163 North Main Street, APN #022-08-041  
Negotiating Parties: Mid-Peninsula Housing Coalition, a California Non-Profit Public Benefit Corporation, City of Milpitas, and Milpitas Redevelopment Agency  
Agency Negotiators: Thomas J. Wilson and Blair King  
Under Negotiation: Terms and conditions for disposition or lease

Councilmember Livengood abstained from the discussion of the above item (item 3).

4. **CONFERENCE WITH LABOR NEGOTIATOR**  
(Pursuant to Government Code Section 54957.6)  
Agency Negotiator: Eddie Kreisberg and Cherie Rosenquist  
Employee Organization: LIUNA
5. **CONFERENCE WITH LABOR NEGOTIATOR**  
(Pursuant to Government Code Section 54957.6)  
Agency Negotiator: Thomas J. Wilson  
Employee Organization: Unrepresented Employees

**6. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

(Pursuant to Government Code Section 54956.9[a])

Title: Milpitas v. Turner Construction et al.

Santa Clara County Superior Court Case No. CV008400

**7. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (REMOVED)**

(Pursuant to Government Code Section 54956.8)

Property: 120-150 Winsor Street and 116-130 N. Main Street

Negotiating Parties: Milpitas Redevelopment Agency and Dorothy A. & Ruth A. Winsor

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:06 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski Gomez present.

**CLOSED SESSION  
ANNOUNCEMENTS**

There were no closed session announcements.

**PLEDGE**

Members of Troop No. 92 led the Council and audience in the pledge of allegiance.

**MINUTES**

MOTION to approve the City Council minutes of May 4, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Dixon, Livengood.

Ayes: 5

**SCHEDULE**

Vice Mayor Dixon added the following meetings that she would be attending: May 20, VTA Finance Administration Meeting; June 3, Santa Clara County Library Joint Powers Authority; June 4, a joint meeting of the VTA Board and Board of Supervisors; and June 17, another meeting of the VTA Finance Administration Committee. Councilmember Polanski reported that tomorrow (May 19) the City's 50<sup>th</sup> Anniversary Committee would be meeting at 7:00 p.m. to discuss some upcoming activities and participation.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Livengood.

Ayes: 5

**PRESENTATIONS**

Bill Reisinger, Chair of the Milpitas Bicycle Transportation Advisory Commission, presented the Mayor with the Bicycle Friendly Community Award, Honorable Mention 2004, from the League of American Bicyclists commenting that this was a very prestigious Award and was received because of the City's work and planning a bicycle friendly community. Mayor Esteves accepted the Award on behalf of the City Council.

Mayor Esteves read a proclamation declaring May as "Bike to Work Month" and May 20, 2004, as "Bike to Work Day" and presented it to Bill Reisinger, Chair, Bicycle Transportation Advisory Commission. Mr. Reisinger encouraged everyone to bike to work on Thursday noting that Milpitas would have three energizer stations, and he would be working at the energizer station at Montague and Main Street.

Mayor Esteves read a proclamation celebrating "Memorial Day 2004" and proclaiming Monday, May 31, 2004, at 9:00 a.m. at the Veterans Memorial Park in the Civic Center Plaza as the date, time, and place for the City of Milpitas to celebrate and presented the proclamation to Sam Tiimalu.

Mayor Esteves read a proclamation declaring May 2004 as "Lions Eyeglass Recycle Month" encouraging all Milpitas citizens to donate outdated pairs of eyeglasses to this valuable cause and presented the proclamation to Don Ryan and Ray Maglalang of the Milpitas Lions and Lions District Governor Elect Larry Hildalgo. Mr. Ryan thanked the Mayor for the proclamation and commented that in 2003/04, 3.5 million pair of eyeglasses were collected and distributed throughout the world. Mr. Hildalgo expressed his appreciation and said he was glad Milpitas was doing this.

Mayor Esteves presented a Commendation to Chris Kaldy for his work and contributions as Music Director and Set Designer of the Rainbow Theatre Production of *Chicago*. Mr. Kaldy thanked the Mayor and the City for making it possible to present this musical at the High School.

Mayor Esteves presented a Commendation to Anne Kelly for her work as Director of the Rainbow Theatre Production of *Chicago*.

Mayor Esteves presented a Commendation to Marcia Morrow in recognition of her many contributions to Milpitas youth and for her recognition as a recipient of the Silver Beaver Award given by the Boy Scouts of America National Council to outstanding male and female citizens who have provided distinguished service to youth on the local level. Ms. Morrow said the Commendation was a complete surprise to her, thanked the Mayor and Council, and said that the more she gives, the more she gets back.

Mayor Esteves presented Certificates of Appreciation to the sponsors of the May 1, 2004, Global Village Event; present to receive Certificates were representatives of the Filipino American Association of Milpitas, Inc.; Milpitas High School MEChA Club; Milpitas Lions Club; Scarab Productions; Tzu Chi Foundation; Vietnamese Folk Arts Institute; Borders Books and Music; and Subway Sandwiches. Unable to be present were Asiya Asif; India Community Center; Milpitas Alliance for the Arts; Milpitas Sister Cities Commission; Milpitas Youth Advisory Commission; Nigerian Language and Cultural Institute; and San Francisco Peace Corps.

## CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer.

Mr. Cacao, President of the Fil-Am Association of Milpitas, invited everyone to attend their multi-cultural festival at the Milpitas Community Center on June 5, 2004, beginning at 2:00 p.m., and continuing with social dancing from 7:00 p.m. to midnight.

A Milpitas High School Student wanted everyone to know that the MEChA Club would be having a car wash on Saturday, May 22, 2004, from 10:00 a.m. to 3:00 p.m. to raise funds for a scholarship to be given to a Senior this year.

Jennifer Lind gave an update on the Senior Scholarship drive for Milpitas High School students and invited everyone to the Senior Award Night which would be taking place at 7:00 p.m. on Thursday, May 20, 2004, in the large gym. Ms. Lind reported that 25 scholarships (\$500 each) would be awarded and read the list of recipients.

Art Swanson said he thought we were trying to copy of the City of Industry by inviting Safeway as a neighbor and talked about using an odometer to help children overcome the fear of learning the place value system.

Rob Means said about three years ago, he began talking about the "big rollover" in the oil industry and commented on its significance and how it will affect everyone.

Frank DeSmidt, Chamber of Commerce, invited everyone to attend the Chamber's next Mixer, which would be a trade show, at the Crown Plaza on Thursday, May 20, 2004, at 5:00 p.m.

## ANNOUNCEMENTS

City Manager Thomas Wilson announced that since July 4<sup>th</sup> falls on Sunday this year, it created some difficulties with the logistics and planning for a July 4<sup>th</sup> parade on Main Street; this year, due to church services and some of the impacts on the businesses in the area, a parade was not proposed but activities at the Sports Center would be increased and include a "Waving the Red, White and Blue" Pool Party, a band concert featuring two bands, and ground fireworks starting at 9:30 p.m. Mr. Wilson welcomed and encouraged everyone to attend.

Councilmember Polanski reported that last Thursday she attended the VTA PAC meeting where the city groups were asked to discuss prioritizing Measure A priorities and she was hoping to get feedback from staff as well as Vice Mayor Dixon that she could share on June 10. Councilmember Polanski thanked the City Manager for the overview on the July 4<sup>th</sup> celebration and requested that a report reviewing the reasons for charging for some of the events and the successes we had last year be on the next Council agenda or the following agenda (first or second meeting in June).

Mayor Esteves thanked the Milpitas Recreation Services and the Children's Discovery Museum for sponsoring Circus Chimera at the Sports Center, commenting that he enjoyed serving as a guest Ring Master; congratulated the City for being named "Tree City USA" for the second year; congratulated staff and the Dempsey neighborhood for working on "Plant a Flower" last Saturday and invited everyone to stop by and view the garden; and congratulated the chartering of the Milpitas Vietnamese Lions Club.

## AGENDA

City Manager Wilson requested items 4 and 5 be removed from the agenda and continued to June 15, 2004. City Attorney Steve Mattas clarified that item 4 be continued to June 1, 2004, noting that the Council had requested all three items come back at the same time and he would be prepared to present all three items on June 1<sup>st</sup>. Councilmember Gomez, referring to item 4, asked that staff be prepared for discussion as to whether or not the weekly updates are a matter of public record.

MOTION to approve the agenda as amended by the removal of items 4 and 5.

M/S: Livengood, Gomez.

Ayes: 5

## CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were no requests.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted, in accordance with the staff recommendations.

M/S: Gomez, Livengood.

Mayor Esteves asked that his abstention be shown on item 8. Mayor Esteves requested that the Arts Commission (item 3) come back at its leisure with an amendment to include a proposal to work on a percentage of development fees/costs that would be allocated to public art. The maker and second to the motion agreed to include the Mayor's direction to the Arts Commission with the approval of the Consent Calendar.

VOTE ON MOTION, including the direction to the Arts Commission: Ayes: 5

- \*1.  
Russell School  
Leadership Program**                      Approved a \$500.00 contribution to the Russell Middle School Leadership Program CASL Leadership Camp from the Council's Community Promotions budget.
- \*2.  
High Speed Rail System**                      Approved Resolution No. 7403 and letter to High Speed Rail Authority Board supporting the California High-Speed Rail Authority's conclusion to use one of the two southern alignments (Pacheco Pass or Diablo Range) into the San Francisco Bay Area for the state's proposed high-speed rail system
- \*3.  
Arts Commission Work Plan**                      Approved the Arts Commission's Work Plan with direction to amend the Word Plan to . working on a proposal to require a percentage (or amount) of development fees/costs to be allocated for public art.
- 4.  
Policy/City Records**                      *Continued to June1, 2004.*
- 5.  
Unrepresented Employees**                      *Continued to June15, 2004.*
- \*8.  
Freestanding Signs in Town  
Center Zoning District**                      Waived full reading of the sign ordinance and adopted Ordinance No. 124.26 (Zoning Ordinance Text Amendment No. ZT2003-5), amending Title XI, Chapter 30 of the Milpitas Municipal Code to increase the number of free standing signs in the Town Center Zoning District. (Mayor Esteves abstained on this item.)
- \*9.  
Water/Recycled Water Rates  
Sewer Rates  
Solid Waste Collection**                      1. Waived full reading of the ordinances.  
2. Adopted Ordinance 120.42 amending sections 6.05, 6.09, 6.10, 6.11, 6.13, 6.14, 6.15, 6.16 and 6.17 of Chapter 1, Title VIII, of the Milpitas Municipal Code setting water and recycled water rates, penalties and service charges for non-payment of water service bills, tampering with City property, illicit fire use, and updating construction water program provisions.  
3. Adopted Ordinance 208.39 amending sections 6.01, 6.03, and 6.04 of Chapter 2, Title VIII, of the Milpitas Municipal Code setting sewer rates and penalties and service charges for non-payment of sewer service bills.  
4. Adopted Ordinance 48.15 amending section 9 of Chapter 200, Title V, of the Milpitas Municipal Code setting penalties and service charges for non-payment of solid waste collection bills.
- \*10.  
Buddhist Temple Expansion  
(Project No. 3120)**                      Adopted Resolution No. 7404 authorizing the lot line adjustment for Buddhist Temple expansion at 50 South Main Street (Project No. 3120).
- \*11.  
Landscaping and Lighting  
Maintenance District No. 98-1**                      Adopted Resolution No. 7405 directing the preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance District No. 98-1, Sinclair Horizon, Program No. 9479.
- \*12.  
Landscaping and Lighting  
Maintenance District No. 95-1**                      Adopted Resolution No. 7406 directing the preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance District No. 95-1, McCarthy Ranch, Program No. 9474.
- \*13.  
Local Government Sharing  
Program (AB63)**                      Adopted Resolution No. 7407 authorizing the City Manager to execute an agreement with the Franchise Tax Board governing participation in the Local Government Sharing Program (AB63), which allows FTB to extract certain information from the 2003 State income tax files and transmitted the records to the local agencies.
- \*14.**                      1. Adopted Resolution No. 7408 approving an agreement with the California Highway

**Firing Range**

- Patrol for joint use of the firing range.
2. Authorized the City Manager to execute agreement with the California Highway Patrol, to continue in an agreement with the City of Milpitas in order to pay their share (\$3,000), plus an additional \$50 per month to off-set maintenance costs, subject to approval as to form by the City Attorney.

**\*15.  
ABAG Power  
Windup Agreement**

Adopted Resolution No. 7409 authorizing the City Manager to execute a Windup Agreement with ABAG POWER and receive distributions of funds as they become available (the City's proportional share of this claim [including interest] is \$316,870).

**\*16.  
Street Sweeping Services**

Authorized the City Manager to amend the current agreement for the collection and disposal of solid waste with BFI Waste System of North America, Inc. to provide for immediate (within 30 days) street sweeping services.

**\*17.  
Kennedy Subdivision  
(Project No. 3159)**

1. Approved the improvement plans and the final map for Kennedy Subdivision, Kennedy Drive (Tract No. 9560) (Project No. 3159).
2. Authorized the City Manager to execute the secured Subdivision Improvement Agreement, subject to the approval as to form by the City Attorney.

**\*18.  
HVAC Maintenance**

Authorized the City Manager to execute an amendment to extend the agreement one additional year with the Pacific Air Solutions to May 1, 2005, in an amount not to exceed \$24,000.00, for annual HVAC maintenance at the Police/Public Works building, subject to approval as to form by the City Attorney.

**\*19.  
Household Hazardous Waste  
Collection**

Authorized the City Manager to execute the First Amendment to the Countywide Household Hazardous Waste Collection agreement with the Santa Clara County Department of Environmental Health, subject to approval as to form by the City Attorney.

**\*20.  
Senior Housing and County  
Health Center EIR  
(Project No. 8103)**

Authorized the City Manager to enter into the Consulting Services Agreement with LSA Associates, Inc. in the amount not to exceed \$135,000, for the Senior Housing and County Health Center EIR (funding to come from Project No. 8103), subject to approval as to form by the City Attorney.

**\*21.  
Buddhist Lotus Society  
(Project No. 3120)**

Approved the Permittee Dedication and Improvement Agreement with Avatamsaka Buddhist Lotus Society (Project No. 3120), and authorized the City Manager to execute the same, subject to the approval as to form by the City Attorney.

**\*22.  
Various CIP Projects  
Consultation**

Authorized the City Manager to execute the agreement amendment with GSS Consulting, in the not-to-exceed amount of \$124,000, for various CIP projects, subject to approval as to form by the City Attorney.

**\*23.  
Exercise Equipment  
(Project No. 8053)**

Awarded the bid for the purchase of three pieces of commercial exercise equipment (Project No. 8053) to the lowest bidder, LifeFitness, in the amount of \$10,842.50.

**\*24.  
Police Department Senior  
Management Recruitments**

Authorized the City Manager to execute an agreement with Hargis & Associates, in an amount not to exceed \$10,400 for the administration of examinations for Police Captain and Police Commander, subject to approval as to form by the City Attorney.

**\*25.  
Miscellaneous Vendors**

Approved the following purchase requests:

1. \$14,700.00 to ThyssenKrupp Elevator Corp. for annual elevator service and preventive maintenance at the Police/Public Works building and City Hall. (Funds are available from the Public Works Department operating budget for this service.)

2. \$5,685.00 to Pacific Air Solutions for replacing three 120 gallon hot water heaters including the building of a raised support system to elevate new tanks from the concrete floor and new plumbing connections at the Sports Center. (Funds are available from the Public Works Department operating budget for this service.)
3. \$29,000.00 to Enviro Commercial Sweeping for street and parking lot sweeping services through the end of June for the Street Maintenance Function. Beginning in July, these sweeping services may be incorporated in the solid waste franchise agreement. This amount is the final monthly payments to the current contractor. (Funds are available from the Public Works Department operating budget for this service.)
4. \$10,374.00 to ACCO Engineered Systems for annual HVAC equipment and building automation computer system service and preventive maintenance for the City Hall building for the Facility Maintenance Division. (Funds are available from the Public Works Department operating budget for this service.)

#### **PUBLIC HEARINGS (None)**

#### **JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

**RA1.  
CALL TO ORDER** Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:00 p.m.

**RA2.  
ROLL CALL** Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

**RA3.  
MINUTES** MOTION to approve the Redevelopment Agency minutes of May 4, 2004, including joint meeting with the City Council, as submitted.

M/S: Gomez, Polanski

Ayes: 5

**RA4.  
AGENDA** MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Gomez, Livengood.

Ayes: 5

Agency/Councilmember Livengood said he would be abstaining from the discussion and vote on items RA5 and RA6 and left the Council chambers.

**RA5.  
MEMORANDUM OF  
UNDERSTANDING  
KB HOME SOUTH BAY, INC.** Assistant City Manager Blair King reviewed the Memorandum of Understanding (MOU) between KB Homes and the Milpitas Redevelopment Agency, the City, and the County of Santa Clara to provide affordable housing for the KB Elmwood development. Mr. King reported that KB had agreed to the MOU, today the Board of Supervisors unanimously approved it, Jeff McMullen, Vice President of KB Homes was present in the audience along with Larry Klamecki, Special Projects Manager for Santa Clara County, and they were available to answer questions relating to their organizations. Mr. King further reported that the MOU requires the development of 110 deed restricted, moderate-income home ownerships units (85 condominiums, 15 townhomes, and 210 single-family detached homes) and a contribution of \$6 million (\$5 million from KB and \$1 million from the County) towards the development of a 98-unit low-income senior housing project proposed for North Main Street, resulting in the development of 208 affordable units (allowing the project to achieve an approximate 30 percent affordability factor). Mr. King explained that the MOU requires the Agency construct the senior affordable apartments within five years and six months of the close of escrow for the Elmwood property or provide the County with the \$5 million KB contribution; staff felt the deadline date could be met.

MOTION to:

1. Adopt Resolution No. RA220 of the Redevelopment Agency authorizing the execution of a Memorandum of Understanding to provide Affordable Housing on the Elmwood Property.
2. Adopt Resolution No. 7401 of the City Council of Milpitas authorizing the execution of a Memorandum of Understanding to provide Affordable Housing on the Elmwood Property.

M/S: Dixon, Polanski.

Ayes: 4 Abstain: 1 (Livengood)

**RA6.  
MID-PENINSULA HOUSING  
COALITION  
SENIOR HOUSING PROJECT**

Assistant City Manager King reported with the adoption of the MOU with KB, the City, the Agency, and the County, staff was recommending the Council/Agency enter into an Exclusive Negotiation Agreement with Mid-Peninsula Housing Coalition to develop concepts for the project and to bring a proposal back to the Council. Mr. King commented that Fran Wagstaff, Executive Director of Mid-Peninsula, was present in the audience, Mid-Peninsula had pledged a \$5,000 non-refundable deposit that would be applied against the development costs if a subsequent development agreement results from this, the period of time extends to the later part of November, and staff was confident an agreement could be reached in that time.

MOTION to adopt Joint Resolution Nos. 7402 and RA221 of the City Council and Milpitas Redevelopment Agency to authorize the City Manager/Executive Director to enter into a period of Exclusive Negotiation with Mid-Peninsula Housing Coalition of Redwood City for the development of an affordable senior housing project on Assessor Parcel Number 022-08-041, at 163 North Main Street.

M/S: Dixon, Gomez.

Ayes: 4 Abstain: 1 (Livengood)

Agency/Councilmember Livengood returned to the dais.

**RA7.  
APTON PROPERTIES, LLC  
MOU**

Principal Housing Planner Felix Reliford reported the item before the Council/Agency was a Memorandum of Understanding between the Redevelopment Agency and Apton Properties providing grant and loan assistance to facilitate the construction of 19 deed-restricted, affordable housing units consisting of 9 very low income units and 10 moderate-income units. Mr. Reliford further reported the MOU commits \$722,000 in grants, \$130,560 for a 20% reduction in City fees, and a \$378,000 construction loan to the developer for affordable housing assistance; upon full build out and sale, the project would produce approximately \$156,800 annually in new tax increment, provide 78 jobs during construction, and provide 96 new residential units, of which 19 will be deed-restricted affordable units. Mr. Reliford noted the developer was present in the audience.

Mayor Esteves passed the gavel to Vice Mayor Dixon and left the Council Chambers.

City Attorney Steve Mattas stated that the Mayor was abstaining on this item because he owns property that may be within the 500 ft. range.

MOTION to adopt Resolution No. RA222 of the Redevelopment Agency approving a Memorandum of Understanding by and between the Redevelopment Agency of the City of Milpitas and Apton Properties, LLC.

M/S: Gomez, Polanski.

Ayes: 4 Abstain: 1 (Esteves)

Mayor Esteves returned to the dais.

**RA8.  
LIBRARY PROGRESS**

Assistant City Engineer Greg Armendariz presented an update on the progress of the Library Project reporting that staff was currently involved in the selection process for the design



**REPORT (PROJECT No. 3394)** architect. Mr. Armendariz further reported that nine proposals for the architectural design of the Library building were submitted as of the May 10, 2004, deadline, several of which were from prominent Bay Area design architectural firms and the interview process began today. Mr. Armendariz said background checks and visiting consultant offices and consultant projects was next with a report to the Library Subcommittee on June 14; the Subcommittee would review the short list of firms and would be making a recommendation to the Council on the finalist. Mr. Armendariz further stated staff would continue through the end of June negotiating the scope with the firm selected and bring the contract to the July meeting or first meeting in August for Council approval, at which time the consultant would be available for questions from the Council.

Agency/Councilmember Livengood commented that one of the issues that always comes up with these firms was sometimes the people who give the presentations are not the people you work with after the contract is approved; he thought a clear expectation was needed as to who would be the contact for staff and who the Council would have contact with.

Mayor Esteves said in addition to the contacts, he would like to see an estimate of their schedule of work on the project.

Vice Mayor Dixon commented that the City had a "lessons learned" format and the consultants should be made aware of it.

Mr. Armendariz responded that staff had been very open with the process and the City's expectations so that the consultants understood not only staff's expectations but the expectations of the Council.

Vice Mayor Dixon commented that it really has to do with the contract, a lot had been learned, and she was hopeful there wouldn't be the same problems this time around. Vice Mayor Dixon inquired about the current available funding for the Library commenting there was some confusion about the TOT (Transient Occupancy Tax) at the Library Advisory Commission meeting last night. Vice Mayor Dixon said the TOT was never meant to be used to build the Library; it was to assist with the Library but not the building and asked how much had been expended so far. City Manager Thomas Wilson responded he didn't have the exact number and could get back to the Council with it but in addition to staff time commitments, there were some expenses associated with the programming (Ripley Associates) and some initial expenses for site acquisition, appraisals, and preservation of the former Senior Center in the project. Mr. Armendariz added that staff would provide the exact number with the next report.

MOTION to note receipt and file Library Project Progress report.

M/S: Polanski, Livengood.

Ayes: 5

**\*RA9.  
Fire Department Apparatus**

Authorized the Redevelopment Agency to purchase and equip one Ladder Truck and one Fire Engine to conform to the Midtown Specific Standards.

**\*RA10.  
Midtown and Related  
Improvements for Main Street**

Authorized the City Manager to execute the agreement amendment with Swinerton Management & Consulting in the amount of \$600,000, to perform additional project management and coordination services for the Midtown and related improvements for Main Street, including the library project, subject to approval as to form by the City Attorney.

**\*RA11.  
Abel Street  
Midtown Improvements**

Authorized the City Manager to execute the agreement amendment with JMH Weiss Inc. in the amount not to exceed \$304,000, to include the design of street improvements to Serra Way between Calaveras and Main, and Curtis Street between Abel and Main, subject to approval as to form by the City Attorney.

**RA12.  
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:41 p.m.

The City Council meeting continued.

**UNFINISHED BUSINESS**

**6.  
Odor Control Update**

Principal Civil Engineer Darryl Wong reviewed activities and key events that had occurred during the month including site visits to Zanker and Cargill to observe odor control best management practices and to discuss odor control activities. Mr. Wong shared information from one of the locations reporting that Cargill was working on a contingency plan and shared two photographs from Cargill showing pond A18 water level as of May 11, 2004, and the proposed location of the gated emergency inlet from Coyote Creek to Pond A18. Mr. Wong further stated that with the warm weather coming, staff was gearing up for some outreach activities including a flyer in the Milpitas Post and distribution in June to every home of door hangers on how to report odors. Mr. Wong noted that in March 23 complaints were logged, 23 in April, and so far in May, six complaints had been logged. Mr. Wong thanked Bill Jones and Dwight Herring of BFI, who were present in the audience.

MOTION to note receipt and file the Odor Control Comprehensive Action Plan progress report.

M/S: Dixon, Livengood.

Ayes: 5

**NEW BUSINESS**

**7.  
Code Enforcement Program**

Acting Planning and Neighborhood Preservation Director Tambri Heyden, along with Senior Housing & Neighborhood Preservation Specialist Gloria Anaya, presented the proposal to expand the City's Code Enforcement Program. Ms. Heyden began by sharing examples of recent efforts to improve the overall appearance of the City. Ms. Heyden reported that the Council approved the Neighborhood Beautification Ordinance in September 1999, effective February 1, 2000, to go beyond violations that go beyond health and safety hazards and establish a minimum level of upkeep and to address unsightliness on both private and public properties, which was a major step towards beautification, and certain expectations were established to address concerns at that time. Ms. Heyden reviewed Phase I that involved substantial education and outreach, included complaint-driven enforcement of the ordinance and the mailing of courtesy notice violations; Phase II instituted an administrative citation process, continued outreach and education, and amendments to the Zoning Code. Ms. Heyden commented on the program's successes reporting that from March 2003 to March 2004, staff closed 96 percent (556 of 582) of the Neighborhood Beautification Ordinance-related customer service requests; 10 percent (62) were abated through citations; and two of the 62 citations were not to be abated through that process. Ms. Heyden further commented on remaining challenges stating that enforcement was only done on weekdays, there was intermittent compliance and recurring violations, labor-intensive notifications for certain violations that should be addressed immediately, a proliferation of temporary signs on public as well as private property, and a lack of citation power for temporary sign violations. Ms. Heyden outlined proposed solutions including transition from a complaint driven to a pro-action enforcement, the addition of weekend enforcement, amendments to the Neighborhood Beautification Ordinance, the Zoning Code, and Sign Code to reduce the number of days of notification from 30 to 15 for certain violations, to provide for the ability to levy a fine without notice for violations that create health and safety dangers or are recurring, intermittent violations, to provide for an administration citation process, and to require a no-fee application process for temporary signs.

Vice Mayor Dixon asked because this had always been complaint driven, would there now be code enforcement staff driving through the City commenting that she was trying to visualize

how it would be done effectively. Ms. Heyden responded better use of all personnel could be made and staff was looking at collaborating with other departments with field personnel to increase the number of eyes looking for violations and launching an educational program with those staff members on the kinds of things to look for. Vice Mayor Dixon said she was glad to see that being addressed. City Manager Wilson commented that digital cameras were incredible and the opportunity to just take a quick photo that could be worked on during the week was really a solution; many City departments use cameras like that for their own work and it would be easy to spend a few hours documenting a whole series of things that could be addressed during other non-weekend time. Vice Mayor Dixon said she thought this was great, was glad it was at this point, and it was important for the community to know that this was phased in and public education was followed through.

Councilmember Polanski commented that during the election season, the City has an excellent process for abating signs and inquired if the same kind of process was being considered. Ms. Anaya responded absolutely, the ordinance provides a process right now for doing that for a sign in the public right of way. Councilmember Polanski further stated that she had noticed in a number of shopping centers people are now outside different stores with all kind of boxes of knickknacks they are selling and inquired if this ordinance would cover some of that. Ms. Anaya responded if their use permit doesn't allow that kind of activity it would be considered outside storage and it wouldn't be allowed. Councilmember Polanski asked if the violation happened on the weekend, how would it be checked out. Ms. Anaya responded it would require a photograph and could be incorporated, along with the signs, as one of the things to look for in the training of whoever is doing weekend enforcement. Councilmember Polanski commented that the Community Advisory Commission (CAC) has been very actively involved in this for several years and was involved in many of their discussions, they wanted it phased in with the educational portion; she thought an excellent job had been done in getting that educational component out about the neighborhood beautification, and she hoped the CAC would continue to be involved with how this is working.

Councilmember Gomez inquired what temporary signs are legal right now. Ms. Anaya responded she was not sure but the problem staff was seeing was only freestanding signs that have been approved by the Planning Commission are legal and all others are unpermitted. Councilmember Gomez inquired about garage sale signs. Ms. Anaya said garage sale and open house directional signs have their own section of the Code. Councilmember Gomez asked if registration of temporary signs is required, would people be required to come in to get approval before they put those signs out. Ms. Anaya responded right now the ordinance allows a sign advertising a special event or grand opening four times a year for 14 consecutive days; staff needs some help in terms of enforcing those particular signs because staff has no idea when the 14 days begins; businesses would be asked to fill out an application, possibly on the City's web site to make it easier, that will help staff to keep track of the signs.

Councilmember Livengood said he had a different perspective on this; he had received complaints about the Neighborhood Beautification Ordinance but all have been about the way some people maintain their property; he hadn't heard from anybody upset about an open house sign but rather about weeds or parked cars and to him that had a much greater impact on the viability or value of a neighborhood than a real estate sign on the corner. Councilmember Livengood further stated he didn't like some of these signs but when you put this into perspective and when you talk about property values, when you live next door to a house with weeds in the front yard, that had a greater impact on property values than a real estate or garage sale sign; he would rather see more emphasis placed going into the neighborhoods and dealing with those problems. Councilmember Livengood further stated that thought the Neighborhood Beautification Ordinance was a good program, he supported it when it was adopted but was concerned that the focus now was on signs and creating a sort of sign police; he thought there were better things to do than worry about signs such as focusing on those people who won't take care of their homes, have weeds for a front lawn, fences that are down, these were quality of life issues; he understood the issue of illegal signs, they were

an annoyance but if we are supposed to be in a time of limited resources, questioned why we are not talking about issuing citations on business owners. Councilmember Livengood inquired about the specific changes and the status of real estate open house signs, asking if they will have to get a permit. Ms. Anaya responded no changes were proposed to the requirements for garage sale or open house directional signs but staff did want to make sure it was understood where the signs can be legally placed. Councilmember Livengood inquired where a real estate sign could be placed and where not. Ms. Anaya responded she had sent out an informational letter with a sketch showing exactly where they are allowed stating that they cannot block the sidewalk, cannot be on the medians, as long as they do not infringe on the sidewalk, and they can be placed on private property or in the area between the curb and the sidewalk.

Mayor Esteves said he thought un-kept homes and reducing the notification period from 30 to 15 days if specific health and safety dangers were being addressed and asked for some examples of specific violations related to health and safety issues so that when they are cited, it is consistent. Ms. Heyden described a scenario where there could be a temporary sign that was not structurally sound that could become a hazard in a windy situation. Mayor Esteves suggested there be a list of violations that are considered health and safety hazards so there is consistency. City Manager Wilson commented that could be done but there was a whole series of these things could be health and safety issues.

Mayor Esteves said he wanted good definitions so the City was defensible and inquired about evening enforcement and pointed out that A-frame signs in San Jose must be removed after sunset or become a violation. Mayor Esteves inquired how staff would go around the neighborhoods for sampling problem areas so as not to pick on any one neighborhood. Ms. Anaya responded one of the reasons for moving from a complaint driven to a pro-active process was not to give the impression that any one neighborhood was being targeted; referring to the success of the vehicle abatement program, Ms. Anaya said the City was divided up into six equal parts; the sign abatement could take on the same kind of process by dividing the City into six equal parts which would be rotated each year. Mayor Esteves, referring to the registration of temporary signs, inquired if the realtors A-frame signs and garage sale signs would be excluded. Ms. Anaya said that was correct and currently when staff encounters a garage sale sign after the dates of the sale, staff would contact the resident and request they remove all their signs.

Mayor Esteves inquired if additional fiscal impact was expected (overtime, etc.)? Ms. Anaya said staff would do its best to utilize whatever field staff can assist in identifying and taking photos and then Code Enforcement staff would do the follow up work with notices and citations. Ms. Heyden added that staff was looking at existing staff and, as an example, the way the Lend-A-Tool Program is staffed on Saturdays might be done differently so the time spent on that could be channeled to this effort. Mayor Esteves asked if taking a picture was legal. City Attorney Mattas responded it was legal to take a picture of a violation, which would establish an immediate record; and there were limitations to a person's ability to protect their own private space.

Vice Mayor Dixon clarified that not just the Sign Ordinance was being looked at but also an amendment to the Neighborhood Beautification Ordinance; banners with no regulations were also being addressed; and with respect to the issue of political signs, there was a 4 x 8 political sign on North Milpitas Blvd, almost to Montague, that had been up since February. Vice Mayor Dixon further commented with respect to the issue of overgrown vegetation, she had an instance where some of her neighbors complained to her, the Fire Department came out, and asked do residents have to be specific as to where the weed problem actually was (front or back yard). Ms. Anaya responded she believed the Fire Department would only address what could be seen from the street. Mr. Mattas added it was not just that there was an issue with weeds in the back yard that weren't particularly attractive but if it was a fire hazard, that could be brought to the City's attention to see if it would be proper to get an inspection warrant.

Councilmember Polanski, following up on Councilmember Livengood's statements, said a temporary tarp being placed on property as a fence can also be offensive to others in the neighborhood (she had reported a fence that had been down for about four years); and inquired how Code Enforcement made sure people keep up their fences as well as their yards. Ms. Anaya responded if it could be seen from the public right-of-way, it can be addressed under the NBO; a misconception was that the NBO does not give authority to tell people to install a new lawn – as long as it is mowed, it is not a violation.

Mayor Esteves thanked Paul Stewart for sending him a copy of the San Jose ordinance regarding real estate signs and asked Mr. Stewart if he'd like to comment.

Paul Stewart, Executive Director for the Santa Clara County Association of Realtors, thanked Gloria Anaya for talking with him about this and said any time they see something that would be restrictive for the real estate business, it causes them concern;. Mr. Stewart asked for confirmation that real estate signs are exempted, under Section 3.07 of the proposed Sign Ordinance. Ms. Anaya responded that was correct. Mr. Stewart further stated he wanted to let the Council know that when he was first hired by the Association, he implemented a sign education program for their members in response to issues because they would get calls from code enforcement from the different cities; described a program he put together where a broker or realtor can anonymously report a violation to him when there is a violation and how if is handled and commented that he always send a copy of the City's Sign Ordinance. Mr. Stewart said he was also going to invite Ms. Anaya to the North Valley Marketing meeting to address the sign issue. Mr. Stewart said they would also like to work with staff as this is developed and as it impacts real estate signs; another thing he thought would be helpful would be to use the San Jose Ordinance; and asked that staff clarify the information and the drawing that was sent out regarding temporary open house signs for realtors.

Frank De Smidt expressed concern that some of what he had heard tonight will have a major impact on businesses and requested the Council refer this matter to the Economic Development Commission to study and provide a report and input to the Council.

MOTION to expand the City's code enforcement program by proceeding with amendments to the Neighborhood Beautification Ordinance, Zoning Code and Sign Code to reduce notification timeframes, add administrative citation abilities, enable fines without notice for certain violations, and require approval for temporary signs; transition from complaint-driven enforcement to active violation identification and institute weekend enforcement and to get input from the Commissions that have been involved (the Community Advisory Commission and the Economic Development Commission).

M/S: Polanski, Dixon.

Ayes: 4

Noes: 1 (Gomez)

## ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:45 p.m.

Gail Blalock, CMC  
City Clerk